

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Shane Kelly) File No.: EB-FIELDNER-23-00034960
Hyannis, Massachusetts) NAL/Acct. No.: 202432010010
) FRN: 0035338375

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 25, 2024

Released: April 26, 2024

By the Commission: Chairwoman Rosenworcel issuing a statement.

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a penalty of \$20,000 against Shane Kelly (Kelly) for operating an unauthorized radio station, known as "The Test", on 87.9 MHz (Station) in Hyannis, Massachusetts, by which Kelly apparently willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting on June 6, 2023. Operating an unauthorized, or pirate, radio station is illegal under the Communications Act of 1934, as amended (Communications Act or Act),¹ and undermines the primary mission of the Federal Communications Commission (FCC or Commission) to manage radio spectrum. Such illegal operations can interfere with licensed communications, including authorized broadcasts and communications by public safety entities. Moreover, such illegal operations pose a danger to the public because they interfere with licensed stations that inform their listeners of important public safety messages, including Emergency Alert System transmissions that provide vital information regarding weather events and other dangers to the public.

II. BACKGROUND

A. Legal Framework

2. On January 24, 2020, Congress passed the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act), which was subsequently codified as section 511 of the Communications Act.² Section 511 states that any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than \$2,000,000 and not more than \$100,000 for each day during which such offense occurs.³ Both of these figures are subject to annual inflation adjustments.⁴ Section 511 defines pirate radio broadcasting as "the transmission of

¹ 47 U.S.C. § 511.

² Preventing Illegal Radio Abuse Through Enforcement Act, Pub. L. 116-109, 134 Stat. 3 (2020) (codified at 47 U.S.C. § 511).

³ 47 U.S.C. § 511(a)-(b). Prior to the passage of the PIRATE Act, the maximum monetary penalty for pirate radio transmissions was \$151,005. See 47 CFR § 1.80(b)(9)(ii) (2019); see also Acerome Jean Charles, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 12744 (2019) (proposing a penalty of \$151,005), consent decree adopted, Order, 35 FCC Rcd 6878 (2020). In 2020, that maximum limit was increased to \$2,000,000. See 47 U.S.C. § 511.

⁴ See 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at \$2,391,097 and 47 U.S.C. § 511(b) at \$119,555); Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, DA 23-1198, 2023 WL 8889597, at *7

communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Federal Communications Commission (Commission), but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations.”⁵ Part 15, among other requirements, states that unlicensed operators in the FM band must not transmit over a certain low-power limit.⁶

B. Factual Background

3. On June 6, 2023, field agents (Agents) from the FCC’s Boston Field Office (Boston Office) monitored the frequency 87.9 MHz in Hyannis, Massachusetts, and, using direction-finding techniques, traced the source of the signal to {[REDACTED]} Lincoln Road, Hyannis, Massachusetts (Lincoln Road Site).⁷ The Agents took field strength measurements of the signal and determined that it exceeded the limits for operation under part 15 of the Commission’s Rules.⁸ Agents again heard the Station identified as “87.9 The Test.” A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the Lincoln Road Site on any frequency. Agents later consulted public records and discovered that Kelly was the owner of the home located at the Lincoln Road Site.⁹

4. On July 11, 2023, Agents spoke with Kelly at the Lincoln Road Site. At the time of the Agents’ visit to the Lincoln Road Site, the Station was not operating. Kelly acknowledged operating the Station on 87.9 FM. He said he has been intermittently operating an FM station as a hobby and admitted he did not have a license to operate a radio station on any frequency. On December 12, 2023, Agents from the Boston Office monitored the frequency 87.9 MHz and observed no broadcasts on this frequency. The Agents determined that no broadcast signals were coming from the Lincoln Road Site on any other frequency.

III. DISCUSSION

5. We find that Kelly, in apparent violation of section 511 of the Act,¹⁰ willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting through the operation of an unlicensed radio station on 87.9 MHz, known as “The Test”, on June 6, 2023. On this date, Agents observed Kelly’s Station operating at the Lincoln Road Site on 87.9 MHz. Agents performed field strength measurements and determined that the transmissions exceeded the limits for operation under part 15 of the Commission’s rules.¹¹ A review of Commission records does not reveal an authorization for any FM broadcast station to operate at or near the Lincoln Road Site at any time relevant to the violations discussed in this NAL. In an interview with Agents, Kelly admitted to being operator of the Station.¹²

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(EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024, as the effective date for the increases).

⁵ 47 U.S.C. § 511(h).

⁶ 47 CFR § 15.239(b) (stating that the field strength of any emissions in the 88-108 MHz band shall not exceed 250 microvolts/meter at 3 meters).

⁷ Material set off by double brackets {[]} is confidential and is redacted from the public version of this document.

⁸ *Id.*

⁹ Town of Barnstable, Assessing Division, Property Card for the Lincoln Road Site, [https://townofbarnstable.us/PropertyRecordCards/{\[REDACTED\]}](https://townofbarnstable.us/PropertyRecordCards/{[REDACTED]}) (last visited Jan. 10, 2024).

¹⁰ 47 U.S.C. § 511.

¹¹ 47 CFR §§ 15.209(a), 15.239(b); *see also* 47 U.S.C. § 511(h) (stating that pirate radio broadcasting “does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations”).

¹² *See supra* para.4.

Accordingly, the Commission finds that Kelly's actions on June 6, 2023, constituted pirate radio broadcasting in apparent violation of section 511 of the Act.¹³

A. Proposed Forfeiture

6. Section 511 of the Act authorizes the Commission to impose a forfeiture against any person "who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting."¹⁴ In exercising our forfeiture authority, we consider the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."¹⁵ We may adjust a forfeiture downward for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.¹⁶

7. Section 511 of the Act and section 1.80 of the Commission's rules authorize enhanced penalties for pirate radio broadcasting.¹⁷ Under these sections, any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than \$119,555 for each day during which the offense occurs, but not more than \$2,391,097 in total.¹⁸

8. The primary intent of the PIRATE Act is to increase financial penalties for pirate radio broadcasting.¹⁹ Accordingly, in 2023, the Commission established a base forfeiture of \$20,000 for pirate radio broadcasting,²⁰ which is twice the pre-PIRATE Act base forfeiture level. Consequently, for the day that Kelly apparently willfully and knowingly violated section 511 of the Act, we apply this base forfeiture amount, for a total proposed base forfeiture of \$20,000.²¹

9. In applying the applicable statutory factors, we also consider whether there is any basis for an upward or downward adjustment of the proposed forfeiture. We find none. After applying section 1.80 of the Commission's rules and the statutory factors, and consistent with the *Forfeiture Policy Statement*,²² Kelly is apparently liable for a proposed total monetary forfeiture of \$20,000.²³

¹³ 47 U.S.C. § 511(a), (h).

¹⁴ *Id.* § 511(a).

¹⁵ 47 CFR § 1.80(b)(11).

¹⁶ *Id.*

¹⁷ 47 U.S.C. § 511; 47 CFR § 1.80(b)(6).

¹⁸ See 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at \$2,391,097 and 47 U.S.C. § 511(b) at \$119,555); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597, at *7 (EB Dec. 22, 2023); see also *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024, as the effective date for the increases).

¹⁹ See S. Rep. No. 116-178, 1 (2019) ("The purpose of S. 1228, the Preventing Illegal Radio Abuse Through Enforcement Act or PIRATE Act, is to increase the financial penalties for pirate radio broadcasting.").

²⁰ The Commission first applied this base forfeiture amount in prior Notices of Apparent Liability for Forfeiture for pirate radio activities. See, e.g., *César Ayora and Luis Angel Ayora, Queens, New York*, Notice of Apparent Liability for Forfeiture, FCC 23-17, 2023 WL 2560017, at *5 (Mar. 15, 2023), *aff'd*, Forfeiture Order, FCC 23-80, 2023 WL 6843186 (Oct. 13, 2023); *Thomas Barnes, La Grande, Oregon*, Notice of Apparent Liability for Forfeiture, FCC 23-16, 2023 WL 2560016, at *4 (Mar. 15, 2023), *aff'd*, Forfeiture Order, FCC 23-79, 2023 WL 6843178, at *1 (Oct. 13, 2023).

²¹ See 47 U.S.C. § 511.

²² See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order*, 12 FCC Rcd 17087, 17101, para. 27 (1997) (Forfeiture Policy Statement), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(11).

IV. CONCLUSION

10. We have determined that Shane Kelly apparently willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting in violation of section 511 of the Act on June 6, 2023. As such, Shane Kelly is apparently liable for a forfeiture of \$20,000.

V. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to section 511 of the Communications Act of 1934, as amended, 47 U.S.C. § 511, and section 1.80 of the Commission's rules, 47 CFR § 1.80, Shane Kelly is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for willful and knowing violation of section 511 of the Act, 47 U.S.C. § 511.

12. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Shane Kelly **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 15.

13. In order for Shane Kelly to pay the proposed forfeiture, he shall notify the Office of the Field Director at field@fcc.gov of his intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. Upon payment, Kelly shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at field@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:²⁴

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159²⁵ or printed CORES form²⁶ must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²⁷ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

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²³ Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

²⁴ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

²⁵ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

²⁶ Information completed using the Commission's Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/cores/userLogin.do>.

²⁷ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- Payment by credit card must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

14. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554.²⁸ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

15. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission’s rules.²⁹ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to the Office of the Field Director at field@fcc.gov.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status.³⁰ Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.³¹

²⁸ See 47 CFR § 1.1914.

²⁹ *Id.* §§ 1.16, 1.80(g)(3).

³⁰ 47 U.S.C. § 503(b)(2)(E).

³¹ See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18-21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852,

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17. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Shane Kelly, {[REDACTED]} Lincoln Road, Hyannis, Massachusetts, 03601.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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6860-62, paras. 21-25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-04, paras. 32-33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *In the Matter of Shane Kelly, Hyannis, Massachusetts*, Notice of Apparent Liability for Forfeiture, File No.: EB-FIELDNER-23-00034960 (April 25, 2024)

For nine decades, the Federal Communications Commission has been our Nation's watchdog when it comes to the use of the public airwaves. We take this responsibility seriously. It means that this resource is broadly available for all kinds of radio and wire activities, provided those who use our airwaves comply with our rules. When users fail to do so and cause harmful interference to others, we take action. That is exactly what we do today with these fines proposed against unauthorized radio operators in Massachusetts.

Thank you to the agents and Field Regional Management in our Boston and New York Field Offices for their work on this effort under the PIRATE Act. These agents are unsung heroes who help us manage our airwaves, and for their security we do not mention them here today but want them to know we are grateful for their service. I will mention, however, those who took up their charge in Washington, so thank you to Loyaan Egal, Jeremy Marcus, Matthew Gibson, Ryan McDonald, Michael Rhodes, David Marks, Robert Keller, Andrew Leja, and Reggie Breshears from the Enforcement Bureau; and William Dever and David Konczal from the Office of General Counsel.